

UNITED STATES DISTRICT COURT

for the

Southern District of New York

2018 APR 24 AM 9:52

Keith Stokes

Petitioner

v.

Case No.

18CV3637

(Supplied by Clerk of Court)

Jamie LaManna, Supt.,

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Keith Stokes
(b) Other names you have used: NONE
2. Place of confinement:
(a) Name of institution: Green Haven Correctional Facility
(b) Address: P.O. Box 4000, Stormville, New York 12582
(c) Your identification number: 14-A-2466
3. Are you currently being held on orders by:
☐ Federal authorities ☒ State authorities ☐ Other - explain:

4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: Supreme Court, State of New York, County of New York
(b) Docket number of criminal case: 724-2013 of New York County
(c) Date of sentencing: May 1st, 2014
☐ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court:

Supreme Court, New York County

(b) Docket number, case number, or opinion number:

Indictment Number 724-2013

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

The judgment of the state trial court, convicting petitioner after trial, by jury of second degree felony murder, robbery and sentence to 25 years to life on May 1st, 2014

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

Supreme Court, New York
Appellate Division First Department

(2) Date of filing:

May 2014 and granted on August 28th, 2014.

(3) Docket number, case number, or opinion number:

Ind. No. 724-2013.

(4) Result:

Affirmed judgment

(5) Date of result:

April 13, 2017, 149 A.D.3d 510 (1st Dept. 2017)

(6) Issues raised:

Denial of constitutional right to counsel of choice without inquiry; improper and non-meaningful response(s) to jury note(s) seeking information during their deliberations;

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Refusal to sever the criminal trial from the charged "codefendant"; unauthorized and prejudicial communication with juror by court officer.

(b) If you answered "No," explain why you did not appeal: _____

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: *New York State Court of Appeals*

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: *724-2013*

(4) Result: *Denied permission for further review*

(5) Date of result: *June 26th, 2017, 29 NY3d 1087 (2017)*

(6) Issues raised: *Same as those listed above*

(b) If you answered "No," explain why you did not file a second appeal: _____

9. Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____
- _____
- _____
- _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____
- _____
- _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____
- _____
- _____
- _____
- _____
- _____
- _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes ☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☐ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____
- _____
- _____
- _____
- _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☐ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____
- _____
- _____
- _____
- _____
- _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
- (b) Name of the authority, agency, or court: _____
- _____
- (c) Date of filing: _____
- (d) Docket number, case number, or opinion number: _____
- (e) Result: _____
- (f) Date of result: _____
- (g) Issues raised: _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

The state trial court violated Petitioner's right to proceed to the criminal trial with counsel of choice (substituted counsel) where counsel had not conducted adequate or any pretrial

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(a) Supporting facts (Be brief. Do not cite cases or law.):

investigation into third-party culpability of the actual perpetrator[s] of the crimes, thereby leaving petitioner to proceed with unprepared defense counsel without any remedy such as a brief continuance or any direct inquiry to defendant [petitioner].

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes☐ No

GROUND TWO:

The state trial court failed to provide a meaningful and responsive inquiry to the jury's note requesting information that was straight-forward during deliberations.

(a) Supporting facts (Be brief. Do not cite cases or law.):

The trial court's answer of "yes and no" only served to deny petitioner a fundamentally fair trial with a reliable result, since this petitioner had arrived at the crime scene after the victim had been killed by someone other than petitioner as the evidence showed.

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes☐ No

GROUND THREE:

The trial court abused its discretion when it failed to grant the defense motion to sever the trial from that of the codefendant (petitioner's brother).

(a) Supporting facts (Be brief. Do not cite cases or law.):

The evidence of guilt pointed to petitioner's brother and/or at least some other person(s) to having committed the charged homicide of the deceased. Therefore, as noted in the jury's note of inquiry, and to assure a fair trial in the fact-finding process of guilt or non-guilt, a severance of the joint trial was required.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☐ No

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

April 18th, 2018

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

04/18/18

X Keith Stoker
Signature of Petitioner
(Pro Se)

Signature of Attorney or other authorized person, if any

Keith Stokes / Dir. # 14-A-2466
Green Haven Correctional Facility
P.O. Box 4000
Stormville, New York 12582

ProSe
MG



NEOPOST FIRST-CLASS MAIL
04/20/2018
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to: Hon. Chief Clerk
Office of the Clerk of the Court
United States District Court
Southern District of New York
U.S. Courthouse Building
500 Pearl Street
New York, New York 10007

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